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| 09/622,830 | 10/18/2000 | Manfred Elzenbeck | 1752/49096 | 5406 |

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EXAMINER

VU, STEPHEN A

| ART UNIT | PAPER NUMBER |
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3636

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/622,830
Filing Date: October 18, 2000
Appellant(s): ELZENBECK, MANFRED

MAILED

NOV 17 2004

GROUP 3600

Vincent J. Sunderdick (#29,004)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 7, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 15-18,23-28, and 42-43 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

A substantially correct copy of appealed claim 15-28 and 42-43 appears on page 1 of the Appendix to the appellant's brief. The minor errors are as follows: the appellant has also included in the Appendix, claims 29-33 that were withdrawn to a non-elected

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invention. The inclusion of these claims should not be in the appeal brief, since these claims are not being appealed.

(9) Prior Art of Record

| | | |
|--------------|---------------|--------|
| 2,127,710 | Baker | 8-1938 |
| GB 2,038,382 | Eng | 7-1980 |
| 4,869,554 | Abu-Isa et al | 9-1989 |
| 3,636,573 | Bartz | 1-1972 |

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker in view of GB 2038382.

Baker shows a lounge chair, as illustrated in Figures 2-5, comprising a frame having longitudinal and transverse bars (1-4) with spring elements (D) held by the frame. The spring elements being made of a rubber material held under pre-strained between longitudinal bars and forming a supporting surface covering the frame. A first prestress of the rubber material at right angle to the longitudinal bars in a first section is different from a second prestress of the rubber material at a right angle to the longitudinal bars in a second section. However, Baker does not disclose the rubber material to be of an elastic textile.

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GB 2038382 teaches an elastic textile product consisting of a knitted fabric having rubber threads (8) and polyester (7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an elastic textile product with rubber threads and polyester as taught by GB 2038382 in lieu of the rubber material of Baker in order to provide an improved resilient stretchable fabric to be tensioned between the bars.

With claim 16, outer contours (23,24,25,26) of the textile structure are held under prestress at the longitudinal bars and at the transverse bars.

With claim 17, supports (4-5) are provided beneath the textile structure.

With claim 18, the supports (4-5) are attached to rails which are movable in a direction of the longitudinal bars.

Claims 19-22 and 42-43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baker in view of GB 2038382 and Abu-Isa et al.

Baker discloses the claimed invention except for employing cushions on the textile structure. Abu-Isa et al teach the placement of cushions (16) on the textile structure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to place cushions on the textile structure of Baker's chair as taught by Abu-Isa et al, in order to provide soft comfort support to the user's body.

Claim 23-28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baker in view of GB 2038382 and Bartz.

Baker discloses the claimed invention except for the longitudinal bars to be foldable and have articulated axles. Bartz teaches a foldable mattress support

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comprising an articulated axle (24) for allowing the head section (14) to be pivoted relative to foot section (15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an articulated axle (24) of Bartz's invention in lieu of the cross bar of Baker's chair in order to allow the backrest of the chair to be pivoted relative to the seat section.

(11) Response to Argument

Claim 15 is the only independent claim outstanding in the case and it requires a lounge chair having longitudinal and transverse bars with an elastic textile structure stretched between the bars. Claim 15 further defines a first prestress area of the textile structure to be different from a second prestress area of the textile structure. It's the examiner's position that the prior art of Baker in view of GB 2038382 meets the limitations of claim 15. The appellant has argued that Baker in view of GB 2038382 does not teach an elastic textile structure that is stretched or strained wherein the prestress is different in various sections transversed to the longitudinal bars (see page 6, on lines 1-3 of the appellant's appeal brief). The examiner disagrees with this argument. The examiner would like to direct attention to Figure 2, wherein the elastic structure is shown to be prestressed at a right angle to the longitudinal bars. It is interpreted that a first prestress area is defined as where the elastic structure engages with the transverse bar (shown in the area of the perforated areas 7) and a second prestress area is defined as where the elastic structure has a half-circular cutout (26) (see page 1, lines 21-24 of Baker). The first prestress area is considered to be substantially different than the second prestress area. Baker discloses the elastic

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structure to have different zones, wherein the perforated areas provide more elasticity (see page 1, lines 21-24 of Baker) than to the other non-perforated areas in addition to stretching (see page 1, lines 33-35). There is a certain degree for the elastic structure to be prestressed, otherwise the elastic structure would sag under the weight of the user and the user's body would hit the ground.

Furthermore, appellant has argued that the prior art of GB 2038382 does not meet the requirements of claim 15 of having a prestress first section different from a prestress second section. Baker has shown to meet this requirement. The secondary reference of GB 2038382 is applied because it teaches an elastic textile product that can be used in lieu of the elastic structure of Baker's lounge chair to provide an improved resilient stretchable fabric to be tensioned between the bars. The discussion of the dependent claims 19-28 and 42-43 are mentioned above. The prior art rejections applied to claims 19-28 and 42-43 are valid.

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For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,



Stephen Vu
November 10, 2004

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